IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 625 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANOJ J PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PJ KANABAR for Petitioner

Mr S P Dave, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 27/04/2001

ORAL JUDGEMENT

The present Revision has been filed by the petitioner-original accused no.4 in Sessions case no.294/98 pending before the City Sessions Court at Ahmedabad, under section 397 of the Criminal Procedure

Code, 1973 (for short 'the Code'), challenging the judgment and order dated 1.2.1999 recorded by the learned Addl.Sessions Judge, Court No.15, City Sessions Court in the aforesaid Sessions Case dismissing an application of the petitioner for recall of order of framing charge against the petitioner along with the three accused persons. It appears to be the case of the prosecution that the petitioner along with other accused persons were charged for offence punishable under section 302. Accordingly charge-sheet was filed before the learned Metropolitan Magistrate, who committed the case of the four accused including the petitioner to the Court of Sessions, since the case was exclusively triable by the Court of Sessions. Charge was framed for the aforesaid offence against all the four accused persons including petitioners. Thereafter the present petitioner being accused No.4 in the aforesaid Sessions Case submitted an application at Exh.19 before the aforesaid Court stating that there was no case against the present petitioner and, therefore, he be discharged from the aforesaid offence. The learned Addl. Sessions Judge heard the parties and came to a finding that there was no reason to accept the said prayer, in view of the material on record therefore, the learned Addl.Sessions Judge dismissed the application of the present petitioner.

2. Feeling aggrieved by the said order of the learned Addl. Sessions Judge, the petitioner has preferred this Revision before this court. It has been mainly contended here that the order of the learned Sessions Judge is illegal and perverse and deserve to be quashed and set aside. It is also contended that no evidence was led in the police papers to show even prima facie involvement of the petitioner as one of the accused in the aforesaid matter since there is no ground to proceed against the petitioner, the petitioner was wrongly charged and, therefore, this was a good case for the discharge of the petitioner for the aforesaid offence. It is also contended that at the stage when the charge was framed, the petitioner was not represented by Advocate, and therefore, appropriate objection could not be raised at that stage. Thereafter when the matter was heard by the learned Sessions Judge, no evidence was shown on which the petitioner could be charged for offence punishable under section 302 of IPC or any other evidence and in that view of the matter, the judgment and order of the trial court are illegal and perverse. The petitioner therefore, prays that this application be allowed and the judgment and order of the learned Addl.Sessions Judge be set aside and the petitioner be discharged from the offence outright by recalling the

order of framing of charge against him.

3. It appears from the record, after some adjournment, Rule was issued by this Court on 26.7.2000. Mr S P Dave, learned APP appears in response to the service of rule. I have heard the learned Advocates for the parties and have perused the papers.

4. As argued by Mr S P Dave, learned APP for the State, power of this Court entertaining Criminal Revision Application is limited and, therefore, unless some glaring error apparent on the face of the record is shown, it would not be possible for this Court to entertain this Revision.

5. In order to find out as to whether it is a case of some evidence or whether it is a case of non-evidence, it was necessary for the learned Advocates for the parties to take me through the order of the trial court. The trial court has dealt with first two paragraphs with a view to narrate the factual aspects argued on behalf of the parties before the learned Sessions Judge and then in para 3 of the order, the learned Sessions Judge has observed as follows:

> "3. Having regard to the submissions made by the learned advocates for the parties and going through the record and proceedings of the case, it appears that the charge against the present accused alongwith other three accused was framed by my learned colleague at exh.1 on 21.12.98 whereunder all the accused have been charged for the offence under Section 34 read with Section 452 of IPC, the accused nos 1,2 and 4 have been charged for the offence under section 34 read with section 302 and 34 read with section 324 of IPC and accused nos 3 and 4 have also been charged for the offence under section 135(1) of the B.P. Act. Apart from the fact that Mr Kanabar has failed to point out any provision of law under which such an application would be maintainable, having gone through the documents relied upon by the prosecution and produced in the court alongwith the list Exh.17, in my opinion, there is sufficient ground against the accused no.4 to proceed further with the trial. The court at this juncture is not required to discuss in detail by appreciating the evidentiary value of the said documents. It is true that the accused no.4 has not been identified in the identification parade held before the executive

> magistrate during the course of investigation, but there are other documents which form part of investigation proceedings and on which the prosecution places reliance prima facie, connecting the accused no.4 with the charges levelled against him. In that view of the matter, I hold that there is sufficient ground to proceed against the accused no.4 in the trial."

6. On going through para 3 of the order of the learned Sessions Judge, it is apparently clear that the learned Addl.Sessions Judge has not put a finger to any of the pieces of evidence - oral or documentary, in order to show involvement of the present petitioner in the aforesaid offence. The observations of the learned Addl.Sessions Judge, are that, at this juncture, the facts and evidence are not required to be discussed in detail by this Court by appreciating evidentiary value of the documents. She has also stated that the present petitioner has not been identified at the test identification parade before the Executive Magistrate during the course of investigation. The learned Addl.Sessions Judge has however, observed that there are other documents which may form part of the proceedings and on which the prosecution places reliance prima facie connecting the present petitioner with the charges levelled against him. On the strength of these observations, it is necessary to consider the documents which would really connect the present petitioner with the charges in question. If the documents or any part thereof connect the present petitioner with the crime in question, even to the smallest extent, then naturally and necessarily the entire grievance of the present petitioner would not stand for a moment also. Sufficiency or otherwise of evidence is not required to be gone into at the time of framing of charge. Therefore, even if there is some material against the accused, then the accused cannot say that the material is not sufficient to frame charge against him. The Court, in such circumstance, is required to consider whether there is evidence to proceed against a particular accused. In order to appreciate the aforesaid argument, it is necessary to ascertain as to what evidence was available on record against the present petitioner. It is true that the learned Addl.Sessions Judge has clearly mentioned that there are other documents in investigation papers which connect the present petitioner with the crime in question. At the same time, on enquiry, the learned APP was unable to point out any particular document on which the prosecution relies which connects the petitioner with the crime in question. It is

therefore, clear that the learned addl.Sessions Judge has not pointed out or referred any particular material or evidence from the records to show a prima facie case against the petitioner. The learned addl.P.P. was requested to show the material on which it could be said that there is a prima facie case against the petitioner or whether there are grounds to proceed against the petitioner. He could not show any material to show prima facie involvement of the petitioner in the offence in question.

7. Therefore, when the aforesaid finding is recorded on certain documents and when it is not clear as to what these documents are, I am of the opinion that this is a fit case in which the matter should be remanded to the trial court for further appreciation of the matter. The parties will certainly be at liberty to advance the arguments before the court concerned and on appreciation of arguments and on appreciation of the materials before the concerned court, such Courts will naturally deal with the same and decide as to whether or not there are grounds against the present petitioner. If on reconsideration of arguments and material, the concerned Judge finds that there are grounds to proceed against the present petitioner, naturally, the learned Judge will be at liberty to pass appropriate orders. On the other hand, if the finding is otherwise, then, the Judge concerned will be at liberty to pass orders according to law. Any way, with a view to find out as to what are the material against the petitioner, it is necessary to remand the matter to the trial court for fresh consideration.

8. In above view of the matter, the present Revision of the petitioner above named is allowed. The judgment and order dated 1.12.1999 passed by the learned Addl.Sessions Judge, Ahmedabad City Sessions Court are quashed and set aside. The matter is remanded to the City Sessions Court at Ahmedabad Ahmedabad for deciding the matter afresh in light of the observations made hereinabove. It will be open to the learned Sessions Judge to entrust the aforesaid matter to any Addl.Sessions Judge of City Sessions Court for considering the aforesaid prayer of the present petitioner according to law and naturally the learned Sessions Judge or the learned Addl.Sessions Judge, as the case will be, at liberty to decide the matter on merit according to law, on due priority basis.

Rule is made absolute to the aforesaid extent.

Office to return the R & P forthwith.

27.4.2001 [D P Buch, J.]
msp